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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	94002206
Party	Applicant Keane Construction, Inc. Keane Construction, Inc. 1739 East Highway 62 Fort Gibson, OK 74434
Correspondence Address	Rachel Blue Doerner Saunders Daniel & Anderson LLP 320 South Boston Avenue, Suite 500 Tulsa, OK 74103-3725 UNITED STATES
Submission	Other Motions/Papers
Filer's Name	Rachel Blue
Filer's e-mail	rblue@dsda.com
Signature	/RachelBlue/
Date	03/08/2007
Attachments	Affidavits-Substitutue Declaration-Agreement.pdf (6 pages)(386784 bytes)

AFFIDAVIT

I, Brian Keane, having been warned that willful false statements and the like are punishable by fine or imprisonment or both under 18 U.S.C. 1001, and that any such statements might jeopardize the validity of my application or any resulting registration declares as follows:

I am an officer of Keane Construction, Inc. and I retained counsel in August 2002 to assist me with the dissolution of an agreement with prior owner, National Barn Company. At that time, the dispute between myself and the prior owner was settled in a manner acceptable to both parties. Part of the settlement agreement included my filing of the concurrent use registration along with Three Boys, LLC. The interests of KCI and Three Boys, LLC., were and continued to be aligned. At my request, my counsel contacted Mr. Christian to propose the concurrent use registration he sought. Mr. Christian and I were made aware of the potential for conflict and were offered an opportunity to consult with other counsel in order to seek the concurrent use registration. It was with my full consent and agreement that Three Boys, LLC., also chose to retain Ms. Blue. I believe that I was properly apprised of possible affect of such representation on the exercise of my counsel independent professional judgment on behalf of myself and Mr. Christian. With that knowledge, I chose to continue my retention of Ms. Blue as counsel and consented to her representation of Three Boys, LLC., as well in this matter.

By: B. Keane

Brian Keane, Keane Construction, Inc.

Date: 2-19-07

AFFIDAVIT

I Jeff Christian, being of lawful age, having been warned that willful false statements and the like are punishable by fine or imprisonment or both under 18 U.S.C. 1001, and that any such statements might jeopardize the validity of my application or any resulting registration declares as follows:

I entered into a concurrent use registration in 2003, with KCI. The interests of Three Boys, LLC., and KCI were and continued to be aligned. Ms. Blue, KCI's counsel contacted me to propose the concurrent use registration be sought. I was made aware of the potential for conflict and was offered an opportunity to consult with other counsel in order to seek the concurrent use registration. Three Boys, LLC., also chose to retain Ms. Blue being fully aware of the potential for conflict between the parties. I believe that I was properly apprised of possible affect of such representation of myself and Mr. Keane. With that knowledge, I have chosen to retain Ms. Blue as counsel and have consented to her continued representation of Mr. Keane and Keane Construction, Inc., as well in this matter.

By:


Three Boys, LLC.

Date:

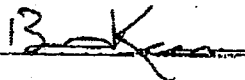
2/20/07

Applicant, KCI, claims the exclusive right to use the mark in the entire United States and its territories, except for Tennessee, Alabama, Kentucky, Virginia, North Carolina, South Carolina, Georgia, Ohio, Pennsylvania, New York, West Virginia, Rhode Island, Delaware, Maryland and Florida, subject to concurrent use proceeding with Three Boys Enterprises, LLC and application serial no. 78/287,919.

SUBSTITUTE DECLARATION

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any resulting registration, declares that he is properly authorized to execute this Declaration on behalf of the Applicant, he believes the Applicant to be the owner of the mark sought to be registered, or if the application is being filed under 15 U.S.C. 1051(b), 1126(d), or 1126(e), he believes that the Applicant to be entitled to use such mark in commerce to the best of his knowledge and belief, no other person, firm, corporation or association, except as specified in the application, has the right to sue the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods and services of such other person, to cause confusion or to cause mistake or to deceive and that all statements made of his own knowledge are true and all statements made on information and belief are believed to be true.

By: _____



Title: _____

PRESIDENT

Date: _____

2-19-07

CO-EXISTENCE AGREEMENT

Keane Construction, Inc. ("KCI") has been using National Barn Company as a trademark for construction of commercial buildings since as early as March, 1992, and has used the mark continuously in interstate commerce since that time.

Three Boys Enterprises, LLC ("Three Boys") is also the owner of a commercial building construction corporation known in several states as National Barn Company, and has been known by that name since January, 1998, by virtue of an agreement with a prior owner. In light of the identical nature of the respective goods of the parties, KCI and Three Boys Enterprises, LLC are concerned there may be a likelihood of confusion arising from the similar terms utilized by the parties, and in order to avoid such confusion, agree as follows:

1. Territory Restriction. Three Boys will use National Barn Company name only in the following areas: Tennessee, Alabama, Kentucky, Virginia, North Carolina, South Carolina, Georgia, Ohio, Pennsylvania, New York, West Virginia, Rhode Island, Delaware, Maryland, and Florida, will not do business in any states other than those aforementioned, and will not challenge or contest in any way the use by KCI of the NATIONAL BARN COMPANY name in the remaining U.S. states and territories.
2. Territory Restriction. KCI may use the mark in the U.S. in any area not specifically set out for use by Three Boys in paragraph 1, and will never challenge nor contest in any way the use by Three Boys its successors, heirs or assigns of National Barn Company in connection with commercial building services in Tennessee, Alabama, Kentucky, Virginia, North Carolina, South Carolina, Ohio, Pennsylvania, New York, West Virginia, Rhode Island, Delaware, Maryland, Georgia, and Florida.
3. Concurrent Use Registration. It is agreed that both parties will cooperate in filing before the United States Patent and Trademark Office of a concurrent use registration, outlining the territory in which each party will use the trademark.
4. Website Operation and Maintenance. Both parties agree that KCI will maintain and operate the National Barn Company website and will secure the rights to website content from any developer or contractor engaged in connection with the website. The parties agree that the website shall, through use of separate portals, hyperlinks, or other available technology, direct consumer traffic or inquiries to the division operating in the territory where construction is desired. That the website will clearly mark the territory to which each party is entitled, and direct inquiries from consumers to the appropriate party in that particular area.
5. Maintaining Goodwill. Both parties agree not to engage in any activity or business practice that would damage the good will of the name, National Barn Company. Three Boys agrees that it will not extend its use of National Barn Company outside the territory designated in paragraph 1, and KCI agrees that it will not extend its use of National Barn Company into the territory designated in paragraph 1.

6 Right of First Refusal. Subject to the following terms and conditions, each party is hereby granted a right of first refusal (the "Right of First Refusal"), exercisable in connection with any proposed sale of all or part of the other party's equity interest or its assets or territory, including, but not limited to merger or acquisition to any Person other than (i) KCI or Three Boys, (ii) any Member or officer of either KCI or Three Boys, EXCEPT that either party may offer a franchise to a franchisee without triggering the right of first refusal, provided that the territory granted under the franchise exists wholly within the territory of the offering party as defined by this agreement.

(a) Notice of Intended Disposition. In the event that either party desires to accept a bona fide offer for the Transfer of any or all of its interest to any Third-Party Offeror, the party desiring to transfer its interest (the Transferor) shall promptly deliver to the other party (the Exercising Party) notice (the "Disposition Notice") of the terms and conditions of the offer, including the purchase price and identity of the Third-Party Offeror.

(b) Exercise of Right. The Exercising Party shall, for a period of twenty-five (25) days following receipt of the Disposition Notice, have the right to repurchase any or all of the assets and territory specified in the Disposition Notice upon the same terms and conditions specified therein or upon terms and conditions which do not materially vary from those specified therein. Such right shall be exercisable by delivery of written notice (the "Company Exercise Notice") to the Transferor prior to the expiration of the 25-day exercise period.

(c) Valuation. Should the purchase price specified in the Disposition Notice be payable in property other than cash or evidences of indebtedness, the Exercising Party (or its assignees) shall have the right to pay the purchase price in the form of cash equal in amount to the value of such property. If the Transferor and the Exercising Party (or its assignees) cannot agree on such cash value within ten (10) days after the receipt of the Disposition Notice, the valuation shall be made by an appraiser of recognized standing selected by the Transferor and the Exercising Party (or its assignees) or, if they cannot agree on an appraiser within twenty (20) days after the receipt of the Disposition Notice, each shall select an appraiser of recognized standing and the two appraisers shall designate a third appraiser of recognized standing, whose appraisal shall be determinative of such value. The cost of such appraisal shall be shared equally by the Transferor and the Exercising Party. The closing shall then be held at the principal offices of the Exercising Party within 10 days of receipt of the cash valuation on the same payment terms specified in the Disposition Notice. The Transferor shall deliver to the Exercising Party the certificates, if any, representing the assets and territory to be purchased, each certificate to be properly endorsed for transfer. The closing shall then be held at the principal offices of the Exercising Party at 10:00 a.m. Oklahoma time on the later of (i) the sixtieth (60th) day following delivery of the Disposition Notice or (ii) the fifth (5th) day after any necessary valuation shall have been made.

(d) Non-Exercise of Right. In the event the Exercising Party, its assignees or Members do

not exercise all of their purchase rights in accordance with this Section, then the Transferor shall have a period of ninety (90) days thereafter in which to sell or otherwise dispose of the assets and territory to the Third-Party Offeror identified in the Disposition Notice upon terms and conditions (including the purchase price) no more favorable to such Third-Party Offeror than those specified in the Disposition Notice. In the event the Transferor does not effect such sale or disposition of the assets or territory within the specified ninety (90)-day period, the Exercising Party's Right of First Refusal shall continue to be applicable to any subsequent disposition of the assets and territory by the Transferor.

7. Binding on future heirs and assigns. This agreement shall be effective and binding upon the parties hereto and upon their officers, employees, attorneys, heirs, executives, successors, assigns, affiliates, related businesses and subsidiaries.

8. Choice of Law. Any disputes arising from the terms of this agreement will be resolved under the laws of the State of Oklahoma.

9. Entire agreement. This agreement represents the complete understanding and agreement of the parties hereto.

Keane Construction, Inc.

DATE March 12, 2003

By: B. Keane
Title: PRESIDENT

DATE April 9, 2003

Three Boys Enterprises, LLC

By: Jeffrey B. Chanters
Title: Member